

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

EOS AIRLINES, INC.,

Reorganized Debtor.

EOS AIRLINES, INC.,

Plaintiff,

v.

NATIONAL CITY BANK OF THE MIDWEST:  
HASSAN TATANAKI  
FREEMARKET GLOBAL, LTD.  
ERIKA VILLALBA and  
JOHN DOE

Defendants.

CHAPTER 11

CASE NO. 08-22581 (RDD)

Adv. Proc. No. 08-08406 (ASH)

Appeal Docket No. 09-cv-03597-CS-LMS

**STIPULATION AND ORDER DISMISSING APPEAL**

**RECITALS:**

- A. On February 5, 2009, Defendant – Appellant Hassan Tatanaki ("Appellant") commenced an appeal (the "Appeal") from an Order, dated January 28, 2009 by filing a notice of appeal, dated February 5, 2009.
- B. Appellant and Plaintiff – Appellee have settled and compromised the above-captioned adversary proceeding.
- C. The Appeal was docketed on April 8, 2009.
- D. By Stipulation and Order signed on April 21, 2009 (Bankruptcy Adversary Docket No. 38), the Bankruptcy Court approved the settlement and compromise.

NOW THEREFORE, in mutual consideration of the foregoing, the signatories hereto stipulate and agree, as follows:

1. The Appeal be, and the same hereby is, dismissed with prejudice pursuant to Rule 8001(c)(1) of the Federal Rules of Bankruptcy Procedure.

Dated: New York, New York  
May 20, 2009

  
United States District Judge

Consented to:

**COHEN TAUBER SPIEVACK & WAGNER P.C.**

By: 

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Ira R. Abel

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Consented to:

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## FACSIMILE

To:	Honorable Cathy Seibel, United States District Judge	From:	Ira R. Abel Esq.
Fax:	914 390 4278	Pages:	3 pages (including cover sheet)
Phone:	914-390-4271	Date:	May 19, 2009
Re:	Stipulation Dismissing Bankruptcy Appeal: Appeal Docket No. 09-cv-03597-CS-LMS	CTSW:	1429
CC:	Derek Etheridge Esq.	Email:	<a href="mailto:detheridge@windelsmarx.com">detheridge@windelsmarx.com</a>
CC:	Charles E. Simpson Esq.	Email:	<a href="mailto:csimpson@windelsmarx.com">csimpson@windelsmarx.com</a>

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Dear Judge Seibel:

On May 18, 2009, your law clerk, Alicia, granted me permission to fax the accompanying stipulation to your Honor's attention. Opposing counsel have received copies of this fax cover and the accompanying stipulation, and in any event have consented to the relief sought.

The stipulation dismisses with prejudice the appeal taken by the defendant in the underlying adversary proceeding before the Bankruptcy Court. Because the dismissal is of an appeal from the Bankruptcy Court, Rule 8001(c)(2) of the Federal Rules of Bankruptcy Procedure applies, rather than Rule 41(a)(1)(A)(i) or (ii) of the Federal Rules of Civil Procedure. An order of the Court is therefore required.

Respectfully yours,

  
Ira Abel

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